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5 Attorneys for Defendant  
6 GOOGLE INC., a Delaware corporation

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11  
12 DAVID ALMEIDA, individually and on  
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 GOOGLE INC., a Delaware corporation; and  
16 DOES 1 through 10, inclusive,

17 Defendants.

Case No. C 08-02088 RMW

**DECLARATION OF DAVID J. SILBERT  
IN SUPPORT OF GOOGLE INC.'S  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR LEAVE TO FILE A FIRST  
AMENDED COMPLAINT AND TO SET  
NEW CASE MANAGEMENT  
CONFERENCE**

Date: October 30, 2009  
Time: 9:00 a.m.  
Dept: 6  
Judge: Hon. Ronald M. Whyte

Date Comp. Filed: April 22, 2008

Trial Date: None set.

1 I, David J. Silbert, declare and state that:

2 1. I am an attorney licensed to practice in the State of California and before this  
3 Court. I am a partner in the law firm of Keker & Van Nest LLP and counsel for Google Inc.  
4 ("Google"), defendant in the above-entitled action. I have personal knowledge of the facts stated  
5 herein and, if called as a witness, I would testify competently thereto.

6 2. Attached hereto as Exhibit A is a true and correct copy of Google Inc.'s verified  
7 Objections and Responses to Plaintiff's First Set of Interrogatories.

8 3. On or about May 1, 2009, Mr. Almeida served his Responses to Google's First  
9 Set of Interrogatories and First Set of Requests for Production of Documents. True and correct  
10 copies of these responses are attached as Exhibit B and C hereto. As can be seen from Exhibit B,  
11 Mr. Almeida objected to all of the interrogatories. He also failed to produce any documents.

12 4. On or about June 5, 2009, I spoke with about Michael Storti, counsel for Mr.  
13 Almeida regarding Mr. Almeida's discovery responses. Mr. Storti explained that he had not  
14 provided any substantive responses, nor produced any documents, because Mr. Almeida intended  
15 to withdraw from the case. Mr. Storti requested that Google stipulate to an amended complaint  
16 that would substitute a new named plaintiff for Mr. Almeida. Google declined to do so.

17 5. After Google drew Mr. Almeida's attention to *Lierboe v. State Farm Mutual*  
18 *Automobile Insurance Co.*, 350 F.3d 1018 (9th Cir. 2003), Mr. Almeida agreed that dismissal,  
19 not amendment, was the appropriate way to dispose of this action.

20 6. On or about July 16, 2009, Mr. Storti forwarded me a proposed stipulation to  
21 dismiss the action. A true and correct copy is attached hereto as Exhibit D. Mr. Almeida's  
22 proposed stipulation required that "each party shall bear his or its own attorneys' fees, costs and  
23 expenses" and also that Google "will not seek or pursue a malicious prosecution claim against  
24 Plaintiff arising from or in connection with this Action."

25 7. As a gesture of good faith, Google offered not to seek its costs as the prevailing  
26 party in the action. Google declined, however, to waive any claims against Mr. Almeida.

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1 I declare under penalty of perjury that the foregoing is true and correct, and that this  
2 declaration was executed on October 9, 2009 in San Francisco, California.

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5 By: /s/ David Silbert

6 David J. Silbert  
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